

In yesterday's Committee hearing, the question was asked repeatedly, where is the case where someone has been prosecuted because they acted in self-defense but were tried due to a lack of the Castle Doctrine laws that could be enacted as a result of the bills before the Committee. Several references were made to *People v Riddle* in the discussion of current Michigan case law, but the case was never really explained to the Committee. I believe that an explanation of that case law would answer the questions brought up yesterday.

The case under discussion is *People v Riddle* – Docket No. 118181, argued in front of the Michigan Supreme Court April 9, 2002 and decided July 31, 2002.

In this case, a defendant convicted of Second Degree murder in a case that would have been a "Castle Doctrine" case if the defendant had been inside his home rather than in his yard or garage, appealed his conviction on the basis of his belief that Castle Doctrine would cover him on his own property rather than in the narrow interpretation that was finally given. The defendant in the self-defense case requested that the jury be instructed in accordance with CJI 2d 7.17, which is titled "No Duty to Retreat While in Own Dwelling" and which provides that a person assaulted in his own home does "not have to try to retreat or get away," but may "stand his ground and resist the attack." The prosecution objected, contending that the instruction was not appropriate because the shooting took place outside the home, in the curtilage. The trial court denied defendant's request and instead instructed the jury in accordance with CJI 2d 7.16, which is titled "Duty to Retreat to Avoid Using Deadly Force" which states:

By law, a person must avoid using deadly force if he can safely do so. If the defendant could have safely retreated but did not do so, you can consider that fact along with all the other circumstances when you decide whether he went farther in protecting himself than he should have.

The Prosecution argued that the defendant in the case could have run into the house or elsewhere and avoided the deadly confrontation. The defendant was thus convicted of Second Degree Murder. He appealed, of course, all the way to the Michigan Supreme Court. The Court of Appeals panel examined the Trial Court's decisions, and held that the defendant had a duty to retreat if safely possible before exercising deadly force to repel an attack ***unless he was inside his dwelling or an inhabited outbuilding*** within the curtilage. Because the shooting occurred within the curtilage but ***not in an inhabited outbuilding***, the panel stated, the trial court properly refused to instruct the jury that defendant had no duty to retreat.

This is a man who attempted to defend himself from what he believed to be a deadly force attack, while in his own yard, and who was convicted of murder, not because he did not act in self-defense but because of ***where he was standing on his own property***.

The Supreme Court reiterated, "We hold that defendant was not entitled to the requested instruction. Defendant was not in his dwelling or an attached appurtenance when he killed Carter. He was outside his home in the yard."

A second question that came up briefly was, and I paraphrase, where has there ever been anyone who hesitated to defend him or her self due to the concept of facing criminal or civil

charges. I have been a party to at least one instance of this. Not in the heat of the moment, but as a prior decision. I was part of a Personal Protection in the Home class where a woman ultimately decided not to get a Concealed Pistols License due to the worry that if she did, and had to defend herself, she stood to lose everything while attempting to defend herself in Court. She was not worried that she would be convicted – she was a radiologist at an Oakland County Hospital and trusted that she would make the right decision, even in the heat of the moment, but that ultimately, defending herself in a possible criminal case and an almost certain civil case would cost her everything, including quite possibly her career.

These Bills can offer law-abiding citizens in Michigan protection that is not available as the law stands, despite current case law and the current interpretation of Castle Doctrine. Please bring these Bills out of Committee and support them. It's the right thing to do for all of our citizens.

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